

Commodity Credit Corporation, USDA

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§ 1412.79 Executed ACRE contract not in conformity with regulations.

If, after an ACRE contract is approved by CCC, it is discovered that such ACRE contract is not in conformity with the provisions of this part, the provisions of this part will prevail.

§ 1412.80 Division of program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this subpart will be divided in the manner specified in the applicable contract or agreement and CCC will ensure that producers, who would have an interest in acreage being offered, receive treatment that CCC deems to be equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in ACRE.

(b) CCC may remove an operator or tenant from an ACRE contract when the operator or tenant:

(1) Requests, in writing to be removed from the ACRE contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the ACRE contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to the provisions in paragraph (b) of this section, tenants must maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with provisions under applica-

ble State law, may be removed from a contract by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a ACRE participant specified in the applicable contract.

PART 1415—GRASSLAND RESERVE PROGRAM

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§ 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners in protecting, conserving, and restoring grassland resources on private lands through short and long-term rental agreements and easements.

(b) The objectives of GRP are to:

(1) Emphasize preservation of native and naturalized grasslands and shrublands;

(2) Protect grasslands and shrublands from the threat of conversion;

(3) Support grazing operations; and

(4) Maintain and improve plant and animal biodiversity.

§ 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of GRP, as administered by the Natural Resources Conservation Service

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(NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

(1) Concur in the establishment of program policy and direction; development of the State allocation formula, and development of broad national ranking criteria.

(2) Use a national allocation formula to provide GRP funds to USDA State offices that emphasizes support for biodiversity of plants and animals, grasslands under the greatest threat of conversion, and grazing operations. The national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the precipitous decline of a population(s) of a grassland-dependent bird(s) or animal(s).

(3) Ensure the National, State, and local level information regarding program implementation is made available to the public.

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction.

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible for:

(1) Identifying State priorities for project selection, based on input from the State technical committee;

(2) Identifying USDA employees at the field level responsible for implementing the program by considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment.

(3) Developing program outreach materials at the State and local level to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program.

(4) Approving conservation practices eligible for cost-share and cost-share rates.

(5) Developing conservation plans and restoration agreements.

(6) Administering and enforcing the terms of easements and rental agreements unless this responsibility is transferred to a third party as provided in § 1415.17.

(7) With advice from the State technical committee, developing criteria for ranking eligible land, consistent with national criteria and program objectives and State priorities. USDA, at the State level, has the authority to accept or reject the State technical committee recommendations; however, USDA will give consideration to the State technical committee's recommendations.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The Secretary may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part which is required by law may be waived.

(f) No delegation in this part to lower organizational levels shall preclude the Chief, NRCS, or the Administrator, FSA, from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

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(g) The USDA Forest Service may hold GRP easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. NRCS and FSA at the State level will establish cut-off periods to rank and select applications. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, unfunded, eligible applications will remain on file until additional funding becomes available or the applicant chooses to be removed from consideration.

(j) The services of other third parties as provided for in 7 CFR part 652 may be used to provide technical services to participants.

§ 1415.3 Definitions.

Administrator means the Administrator of the Farm Service Agency (FSA) or the person delegated authority to act for the Administrator.

Chief means the Chief of the Natural Resources Conservation Service (NRCS) or the person delegated authority to act for the Chief.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The Chief and Administrator are Vice Presidents of CCC. CCC provides the funding for GRP, and FSA and NRCS administer the GRP on its behalf.

Common grazing practices means those grazing practices, including those related to forage and seed production common to the area of the subject ranching or farming operation, and the application of routine management activities necessary to maintain the viability of forage resources, that are common to the locale of the subject ranching or farming operation.

Conservation District means any district or unit of State, tribal, or local

government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "resource conservation district," "land conservation committee," or similar name.

Conservation plan means a record of the GRP participants' decisions and supporting information for protection and treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide criteria for each natural resource concern (soil, water, air, plants, and animals) and takes into account economic and social considerations. The plan describes the conservation values of the grassland and schedule of operations and activities required to solve identified natural resource problems and take advantage of opportunities at a conservation management system level. The needs of the participant, the resources, Federal, State, and local requirements will be met by carrying out the plan.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Conservation values means those natural resource attributes identified by USDA as having significant importance to maintaining the natural functions and values of the grassland area, including but not limited to, habitat for declining species of grassland-dependent birds and animals.

Cultural practice means those practices such as the installation of fences, watering, feeding, and sheltering facilities necessary for the raising of livestock, including related forage and seed production.

Department means United States Department of Agriculture.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States for the purpose of protecting the grassland and other conservation values of the property. Under

GRP, the property rights are conveyed in a “conservation easement deed.”

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under GRP.

Enhancement means to increase or improve the viability of grassland resources, including habitat for declining species of grassland-dependent birds and animals.

Field Office Technical Guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information for the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forb means any herbaceous plant other than those in the grass family.

Grantor is the term used for the landowner who is transferring land rights to the United States through an easement.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, and forbs. The definition of grassland as used in the context of this rule includes shrubland, land that contains forbs, pastureland, and rangeland.

Grazing value is a term used in the calculation of compensation for both rental agreements and easements. For easements, this value is determined through an appraisal process. For rental agreements, USDA determines the grazing value based upon an administrative process.

Improved grassland, pasture, or rangeland means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

Landowner means a person or persons holding fee title to the land.

Native means a species that is a part of the original fauna or flora of the area.

Naturalized means an introduced, desirable forage species that is eco-

logically adapted to the site and can perpetuate itself in the community without cultural treatment. For the purposes of this regulation, the term “naturalized” does not include noxious weeds.

Participant means a landowner, operator, or tenant who is a party to a GRP agreement. The term “agreement” in this context refers to GRP rental agreements and option agreements to purchase easements. Landowners of land subject to a GRP easement are also considered participants regardless of whether such landowner conveyed the easement to the Federal Government.

Pastureland means a land cover/use category of land managed primarily for the production of desirable, introduced, perennial forage plants for grazing animals. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, renovation, and control of grazing.

Permanent easement means an easement that lasts in perpetuity.

Private land means land that is not owned by a governmental entity.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Rental agreement means an agreement where the participant will be paid annual rental payments for the length of the agreement to maintain and/or restore grassland functions and values under the Grassland Reserve Program.

Restoration means implementing any conservation practice (vegetative, management, or structural) that restores functions and values of grassland and shrubland (native and naturalized plant communities).

Restoration agreement means an agreement between the program participant and the United States Department of Agriculture to restore or improve the functions and values of grassland and shrubland.

Restored grassland means land that is reestablished through vegetative, management, or structural practices, to grassland and shrubland, according to criteria in the NRCS Field Office Technical Guide.

Secretary means the Secretary of Agriculture.

Shrubland means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

Significant decline means a decrease of a species population to such an extent that it merits direct intervention to halt further decline, as determined by the NRCS State Conservationist in consultation with the State Technical Committee.

Similar function and value means plants that are alike in growth habitat, environmental requirements, and provide substantially the same ecological benefits.

State technical committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. § 3861.

USDA means the Chief, NRCS, and the Administrator, FSA.

§ 1415.4 Program requirements.

(a) Only landowners may submit applications for easements. For rental agreements, the prospective participant must provide evidence of control of the property for the duration of the rental agreement.

(b) The easement and rental agreement will require that the area be maintained in accordance with GRP goals and objectives for the duration of the term of the easement or rental agreement, including the conservation, protection, enhancement, and, if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a conservation plan approved by USDA to conserve, protect, enhance, and, if necessary, restore the viability of the grassland enrolled into the program. The conservation plan documents the conservation values, characteristics, current and future use of the land, and practices that need to be applied along with a schedule for application.

(d) The easement and rental agreement must grant USDA or its representatives a right of ingress and egress to the easement and rental agreement area. For easements, this access is legally described by the conservation easement deed. Access to rental agreement areas is identified in the GRP conservation plan.

(e) Easement participants are required to convey title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by the USDA.

(f) Easement participants are required to use a standard GRP conservation easement deed developed by USDA. The easement grants development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental agreement and comply with all terms and conditions of the conservation plan and any associated restoration agreement.

(h) Easements and rental agreements allow the following activities:

(1) Common grazing practices, including maintenance and cultural practices on the land in a manner that is

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consistent with maintaining the viability of native and naturalized grass and shrub species;

(2) Haying, mowing, or harvesting for seed production, except that such uses shall have certain restrictions as determined by the NRCS State Conservationist, in consultation with the State technical committee, in order to protect, during the nesting season, birds in the local area that are in significant decline or are conserved in accordance with Federal or State law; and

(3) Fire rehabilitation and construction of firebreaks, fences, corrals, watering facilities, seedbed preparation and seeding, and any other related facilitating practices, as determined by USDA, needed to protect and restore the grassland functions and values.

(i) Any activity that would disturb the surface of the land covered by the easement is prohibited except for:

(1) Common grazing management practices which are carried out in a manner consistent with maintaining the functions and values of grassland common to the local area, including fire rehabilitation and construction of firebreaks, construction of fences, and restoration practices,

(2) Maintenance and necessary cultural practices associated with common grazing practices, and

(3) Other activities that result in only a temporary disturbance to the surface of the land where USDA determines that the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources protected under an easement or rental agreement. Such a temporary disturbance, being of a short duration and, not to exceed the extent of time ordinarily necessary for completing an activity, as determined by USDA.

(j) Rental agreement contracts may be terminated by USDA without penalty or refund if the original participant dies, becomes incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert rental agreements to an easement, provided that the easement is for a longer duration than the rental agreement, funds are available, and the project meets condi-

tions established by the USDA. Land cannot be enrolled in both a rental agreement option and an easement enrollment option at the same time. The rental agreement shall be deemed terminated the date the easement is recorded in the local land records office.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly-owned land is not eligible.

(b) Land is eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubs (including native and naturalized rangeland and pastureland); or

(2) The land is located in an area that has been historically dominated by grassland, forbs, or shrubs, and the State Conservationist, with advice from the State technical committee, determines that it has potential to provide habitat for animal or plant populations of significant ecological value, if the land is—

(i) Retained in the current use of the land; or

(ii) Restored to a native or naturalized grassland conditions.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental agreement.

(d) Forty contiguous acres is the minimum acreage eligible for enrollment in GRP. However, less than 40 acres may be accepted if the USDA, with advice from the State technical committee, determines that the enrollment of acreage meets the purposes of the program and grants a waiver. USDA, at the State level, may also establish a higher minimum acreage level. USDA will review any minimum acreage requirement other than the statutory baseline level of 40 acres to ensure, to the extent permitted by law, that this requirement does not unfairly discriminate against small farmers.

(e) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract or easement. This land becomes eligible for enrollment in GRP

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when the existing contract expires or is terminated and the grassland values and functions are no longer protected.

(f) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the prospective GRP participant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

§ 1415.6 Participant eligibility.

To be eligible to participate in GRP an applicant:

- (a) Must be a landowner for easement participation or be a landowner or have general control of the eligible acreage being offered for rental agreement participation;
- (b) Agree to provide such information to USDA that the Department deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;
- (c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400; and
- (d) Meet the conservation compliance requirements found in 7 CFR part 12.

§ 1415.7 Application procedures.

(a) Any owner or operator or tenant of eligible land that meets the criteria set forth in §1415.6 of this part may submit an application through a USDA Service Center for participation in the GRP. Applications are accepted throughout the year.

(b) By filing an Application for Participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values and for other activities that are necessary for the USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental agreement for which

they seek to enroll their land. Rental agreements may be for 10-years, 15-years, 20-years, or 30-years; easements may be for 30-years, permanent, or for the maximum duration authorized by State law.

§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the national level, will provide to USDA offices at the State level, broad national guidelines for establishing State specific project selection criteria.

(b) USDA, at the State level, with advice from the State technical committee, establishes criteria to evaluate and rank applications for easement and rental agreement enrollment following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

- (1) Native and naturalized grassland;
- (2) Protection of grassland from the threat of conversion;
- (3) Support for grazing operations; and
- (4) Maintenance and improvement of plant and animal biodiversity.

(d) When funding is available, USDA, at the State level, will periodically select for funding the highest ranked applications based on applicant and land eligibility and the State-developed ranking criteria.

(e) States may utilize one or more ranking pools, including a pool for special project consideration such as establishing a pool for projects that receive restoration funding from non-USDA sources.

(f) The USDA, with advice from the State technical committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The FSA State Executive Director and NRCS State Conservationist, with advice from the State technical committee, will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, USDA may select a lower ranked application that can be fully funded. Applicants may

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choose to change the duration of the easement or agreement or reduce acreage amount offered if the application ranking score is not reduced below that of the score of the next available application on the ranking list.

§ 1415.9 Enrollment of easements and rental agreements.

(a) Based on the priority ranking, USDA will notify applicants in writing of their tentative acceptance into the program for either rental agreement or conservation easement options. The participant has 15 calendar days from the date of notification to sign and submit a letter of intent to continue. A letter of intent to continue from the applicant authorizes USDA to proceed with the enrollment process and evidences a good faith intent on the part of the applicant to participate in the program.

(b) An offer of tentative acceptance into the program does not bind the USDA to acquire an easement or enter into a rental agreement, nor does it bind the participant to convey an easement, enter into a rental agreement, or agree to restoration activities.

(c) For easement projects, land is considered enrolled after the landowner signs the intent to continue. For rental agreements, land is considered enrolled after a GRP contract is approved by USDA and signed by the participant.

(d) USDA provides the applicant with a description of the easement or rental area; the easement terms or rental terms and conditions; and other terms and conditions for participation that may be required by CCC.

(e) For easements, after the land is enrolled, USDA will proceed with the development of the conservation plan and obtain an appraisal. If the landowner accepts the appraisal offer from USDA, the landowner signs an option agreement to purchase for the appraisal amount. USDA will then proceed with other easement acquisition activities, which include a survey of the easement, securing necessary subordination agreements, procuring title insurance, developing a baseline data report, and conducting other activities necessary to record the easement.

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(f) Prior to execution by USDA and the participant of the rental agreement or easement, USDA may withdraw its offer anytime due to lack of available funds, title concerns for easements, or other reasons. For easements, the appraisal offer to the participant shall be void if the easement is not executed by the participant within the time specified in the option agreement to purchase.

§ 1415.10 Compensation for easements and rental agreements.

(a) Compensation for easements will be based upon:

(1) The fair market value of the land, less the grazing value encumbered by the easement as determined by an appraisal for permanent easements; and

(2) Thirty percent of the value determined in paragraph (a)(1) of this section for 30-year easements or for an easement for the maximum duration permitted under State law.

(b) For 10-, 15-, 20-, and 30-year rental agreements, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the agreement, as determined by USDA. USDA may adjust rental agreement rates, not to exceed the statutory limits, based on duration of agreement, inflation, and other economic considerations associated with grazing lands.

(c) In order to provide for better uniformity among States, the FSA Administrator and the NRCS Chief may review and adjust, as appropriate, State or other geographically based payment rates for rental agreements.

(d) For easements, to minimize expenditures on individual appraisals and to expedite program implementation, USDA may complete a programmatic appraisal to establish regional average market values and grazing values if acceptable under federally recognized real property valuation standards.

(e) Easement or rental agreement payments received by participant shall be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to receive under other USDA programs.

§ 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental agreements. NRCS, in consultation with the program participant, determines if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination is also subject to the availability of funding. USDA may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration agreement identifies conservation practices and measures necessary to restore or improve the functions and values of the grassland. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental agreement through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and when funds are available.

(b) Restoration practices are those land management, vegetative, and structural conservation practices and measures that will restore or improve the grassland ecological functions and values on native and naturalized plant communities. The NRCS State Conservationist, with advice from the State technical committee and in consultation with FSA, determines the conservation practices, measures, payment rates, and cost-share percentages, not to exceed statutory limits, available under GRP. A list of restoration practices approved for cost-share assistance under GRP restoration plans is available to the public through the local USDA Service Center. NRCS, working through the local conservation district with the program participant, determines the terms of the restoration agreement. The conservation district may assist NRCS with determining eligible restoration practices

and approving restoration agreements. Restoration agreements do not extend past the date of a GRP rental agreement or easement.

(c) Only NRCS approved restoration practices and measures are eligible for cost sharing. Payments under GRP restoration agreements may be made to the participant of not more than 90 percent for the cost of carrying out conservation practices and measures on grassland and shrubland that has never been cultivated, and not more than 75 percent on restored grassland and shrubland on land that at one time was cultivated.

(d) Restoration plans are entered into for restoring either native or naturalized plant communities. When seeding is determined necessary for restoration, USDA gives priority to using native seed. However, when native seed is not available, or returning the land to native conditions is determined impractical by USDA, plant propagation using species that provide similar functions and values may be utilized.

(e) Cost shared practices must be maintained by the participant for the life of the practice, as identified in the restoration agreement. The life of the practice must be consistent with other USDA cost shared or easement programs. Failure to maintain the practice is dealt with under the terms of the restoration agreement and may involve repayment of the Federal cost share plus interest.

(f) All conservation practices must be implemented in accordance with the NRCS Field Office Technical Guide.

(g) Technical assistance is provided by NRCS, or an approved third party.

(h) If the participant is receiving cost share for the same practice from State or local government, NRCS will adjust the GRP cost share rate so that the combined cost share received by the participant does not exceed 100 percent of the total actual cost of the restoration. In addition, the participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice.

(i) Cost share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible

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restoration practice has been established in compliance with appropriate standards and specifications.

(j) Restoration practices identified in the restoration plan may be implemented by the participant or other designee. Cost-share payments will not be made for practices applied prior to submitting an application to participate in the program.

(k) Cost share payments will not be made for practices implemented or initiated prior to the approval of a rental agreement or easement acquisition unless a written waiver is granted by USDA at the State level prior to installation of the practice.

§ 1415.12 Modifications to easements and rental agreements.

(a) After an easement has been recorded, no modification will be made to the easement except by mutual agreement by the Chief, NRCS, and the landowner.

(b) Easement modifications may only be made by the Chief, NRCS, after consulting with the Office of the General Counsel. Minor modifications may be made by the NRCS State Conservationist in consultation with Office of the General Counsel. Minor modifications are those that do not affect the substance of the conservation easement deed. Such modifications include, typographical errors, minor changes in legal descriptions as a result of survey or mapping errors, and address changes.

(c) Approved modifications will be made only in an amendment to an easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(d) The Chief, NRCS, may approve modifications on easements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was acquired or other terms of the easement.

(e) NRCS State Conservationists may approve modifications for restoration agreements and conservation plans as long as the modifications do not affect the provisions of the easement or rental

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agreement and meets GRP program objectives.

(f) USDA may approve modifications on rental agreements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to the participant's acceptance into the program shall void the offer of enrollment, unless at the option of USDA at the State level, an offer is extended to the new participant and the new participant agrees to the same easement or rental agreement terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original landowner unless USDA receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner or contract successor is responsible for complying with the terms of the recorded easement or rental agreement and for assuring completion of all measures and practices required by the associated restoration agreement. Eligible cost share payments will be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to landowners, the United States bears no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost share payments, USDA may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement shall apply to any of its agents or assigns. All obligations of the landowner under the GRP conservation easement deed also binds the landowner's heirs, successors,

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agents, assigns, lessees, and any other person claiming under them.

(g) Rental agreements may be transferred to another landowner, operator or tenant that acquires an interest in the land enrolled in GRP. The successor must be determined by USDA to be eligible to participate in GRP and must assume full responsibility under the agreement. USDA may require a participant to refund all or a portion of any financial assistance awarded under GRP, plus interest, if the participant sells or loses control of the land under a GRP rental agreement, and the new owner or controller is not eligible to participate in the program or declines to assume responsibility under the agreement.

§ 1415.14 Misrepresentation and violations.

(a) Contract violations:

(1) Contract violations, determinations, and appeals are handled in accordance with the terms of the program contract or agreement and attachments thereto.

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part is not entitled to contract payments and must refund to CCC all payments, plus interest in accordance with 7 CFR part 1403.

(3) In the event of a violation of a rental agreement, the participant will be given notice and an opportunity to voluntarily correct the violation within 30-days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental agreement.

(b) Easement violations: Easement violations are handled under the terms of the easement. Upon notification of the participant, USDA has the right to enter upon the easement area at any time to monitor compliance with the terms of the GRP conservation easement or remedy deficiencies or violations. When USDA believes there may be a violation of the terms of the GRP conservation easement, USDA may enter the property without prior notice. The participant shall be liable for any costs incurred by the United

States as a result of the participant's negligence or failure to comply with easement.

(c) USDA may require the participant to refund all or part of any payments received by the participant or pay liquidated damages as may be required under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, rental payment, or cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental agreement, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(e) Under a GRP conservation easement, the United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 1415.15 Payments not subject to claims.

Any cost-share, rental payment, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1415.16 Assignments.

(a) Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

(b) If a participant that is entitled to a payment dies, becomes incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Easement transfer to third parties.

(a) USDA may transfer title of ownership to an easement to an approved private conservation or land trust organization or State agency with the consent or written request of the landowner and upon a determination by the Secretary, or his or her designee, that granting permission will promote protection of grassland. Such entities must be a qualified organization under 16 U.S.C. § 3838q that the Secretary determines has the appropriate authority, expertise, and resources necessary to assume title ownership of the easement. Rental agreements will not be transferred.

(b) USDA has the right to conduct periodic inspections and enforce the easement and associated restoration agreement for any easements transferred pursuant to this section.

(c) The private organization, State, or other Federal agency must assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land to the extent that such restoration or rehabilitation is above and beyond that required by the GRP conservation plan and restoration agreement. Any additional restoration must be consistent with the purposes of the easement.

(d) A private organization or State agency that seeks to hold title to a GRP easement must apply to the NRCS State Conservationist for approval. The State Conservationist shall consult with FSA State Executive Director prior to rendering its determination.

(e) For a private organization to be qualified to be an easement holder, the private organization must be organized as required by 28 U.S.C. § 501(c)(3) of the Internal Revenue Code of 1986 or be controlled by an organization described in section 28 U.S.C. § 509(a)(2). In addition, the private organization must provide evidence to USDA that it has:

(1) Relevant experience necessary to administer grassland and shrubland easements;

(2) A charter that describes the commitment of the private organization to conserving ranchland, agricultural

land, or grassland for grazing and conservation purposes;

(3) The human and financial resources necessary, as determined by the Chief, NRCS, to effectuate the purposes of the charter; and

(4) Sufficient financial resources to carry out easement administrative and enforcement activities.

(f) In the event that the easement holder fails to enforce the terms of the easement, as determined in the discretion of the Secretary, the Secretary, his or her successors and assigns, shall have the right to enforce the terms of this easement through any and all authorities available under Federal or State law or, at the option of the Secretary, to have all right, title, or interest in this easement revert to the United States of America. Further, in the event the easement holder dissolves or attempts to terminate the easement, then all right, title, and interest shall revert to the United States of America.

(g) Should this easement be transferred pursuant to this section, all warranties and indemnifications provided for in this Deed shall continue to apply to the United States. Subsequent to the transfer of this easement, the easement holder shall be responsible for conservation planning and implementation and will adhere to the NRCS Field Office Technical Guide for maintaining the viability of grassland and other conservation values.

(h) Due to the Federal interest in the GRP easement, the easement interest cannot be condemned.

§ 1415.18 Appeals.

(a) Applicants or participants may appeal decisions regarding this program in accordance with part 7 CFR part 614, 11, and 780 of this Title.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

§ 1415.19 Scheme or device.

(a) If it is determined by the Department that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid

such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the Department.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to the Department any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

§ 1415.20 Confidentiality.

The release of appraisal information shall be disclosed at the discretion of USDA in accordance with applicable law.

PART 1416—2006 EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

Subpart A—General Provisions for 2006 Emergency Agricultural Disaster Assistance Programs

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Subpart I—2005 Catfish Grant Program

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